IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2593 OF 2004

Manohar Balkrishna Shinde .. Petitioner
Vs.
Bhimrao Dharma Gade .. Respondent.

Mr.S.S.Patwardhan for the petitioner.
Mr.Umesh Mankapure for the respondent.

CORAM : D.B.BHOSALE, J.
DATED : 21ST FEBRUARY, 2005

P.C.:

. Heard Mr.Patwardhan, learned counsel for the petitioner and Mr.Mankapure, learned counsel for the respondent.

2. Mr.Patwardhan, learned counsel for the petitioner submits that the instant proceedings raise a dispute as to whether the petitioner had done the entire construction of the disputed bungalow as claimed by him or partly done by him and partly by some other contractor as contended by the respondent-defendant. He, therefore, submits that ultimately if the petitioner proves before the trial Court that the entire construction had been done by the petitioner, in that case he may be given liberty to file an application for appointment of a Court Commissioner if a dispute in respect of the extent of construction is raised by the respondent-defendant and/or if it was found that the

extent of construction would be necessary for final adjudication of the suit. Mr.Mankapure, learned counsel for the respondent did not seriously oppose this prayer. However, he submitted that if such application is filed, same may be decided in accordance with law. After having heard the learned counsel for the parties I am satisfied that the following order shall meet the ends of justice:

. It is open for the petitioner to file an application for an appointment of a Court Commissioner for measurement of the disputed bungalow, if in the course of evidence the petitioner brings material and/or evidence to prima facie establish that the construction of the entire bungalow had been done by him and if it was found that the extent of construction would be necessary for final adjudication of the suit. If such application is filed, same may be considered in accordance with law. Liberty granted by this order shall not be construed to mean that this Court has allowed the prayer of an appointment of a Court Commissioner.

. The writ petition is disposed of as not pressed.

(D.B.Bhosale, J.)